IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24/12/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No. 3147 of 1996

R. Kamalam,
W/o. Vargheese, Melavilai,
Mannappachankuzhi, Kattathurai Post,
Kanyakumari District. .. Petitioner.

-Vs-

1. The Deputy Registrar of
Co-operative Societies,
Thuckallay, Kanyakumari District.

2. Y.191, Senni Thottam Primary
Agricultural Co.operative Bank,
represented by its Special Officer,
Senni Thottam, Thuckkalay,
Kanyakumari District.

3. The District Judge, Nagercoil. .. Respondents.

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for records of the first respondent in S.C.No.1/89 dated 17-1 -90 as confirmed in C.M.A.No.3/95 dated 20-10-95, on the file of the third respondent herein and quash the same as far as the petitioner is concerned.

For Petitioner :: Mr. M. Saravanakumar

For 2nd respondent :: Mr. M.M. Sundaresh

:ORDER

The petitioner challenges surcharge proceedings initiated by the Deputy Registrar of Co-operative Societies, Thuckallay, first respondent herein and the ultimate order of the Co-operative Tribunal, confirming the said surcharge proceedings in this writ petition.

2. According to the petitioner, the first respondent initiated suo motu

enquiry under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983 for recovery of nearly Rs.97,225.05 alleging that there was some irregularity while the petitioner was working as Secretary of Y-191, Senni Thottam Primary Agricultural Co-operative Bank. The first respondent issued a show cause notice on 19-1-89, calling upon him to show cause why surcharge proceedings under Section 8 7 of the Tamil Nadu Co-operative Act, 1983 should not be initiated for penal recovery. By letter dated 9-2-89, the petitioner requested the first respondent to furnish copies of certain documents relied on by the respondent for initiating action under Section 87 of the said Act. Since in spite of several requests and representation, he was not supplied with those required documents. Ultimately, the first respondent passed an order on 17-01-1990 holding against the petitioner. He filed an appeal before the Co-operative Tribunal (District Judge), Nagercoil in C.M.A.No.3 of 95 which was also dismissed on 20-10-95 ; hence the present writ petition.

3. The first respondent contesting Co-operative Bank has not filed counter affidavit disputing various averments made by the petitioner.

4. Heard learned counsel for the petitioner as well as contesting second respondent/Co-operative Bank.

5. (i) Mr. M. Saravanakumar, learned counsel for the petitioner, after taking me through the surcharge proceedings and the order of the Co-operative Tribunal as well as the relevant provisions, namely, Section 87 of the Tamil Nadu Co-operative Societies Act, 1 983, would contend that in the light of the time limit prescribed and of the fact that final order was passed after the prescribed limit of six months and no authorisation by the authority concerned, the entire proceedings are liable to be quashed. He also contended that since he was not provided with required documents in the enquiry, the ultimate order of the first respondent cannot be sustained. He further contended that the third respondent-Co-operative Tribunal committed an error in confirming the said order.

(ii) On the other hand, Mr. M.M. Sundaresh, learned counsel for the contesting second respondent-Co-operative Bank, would contend that the limitation prescribed under the Act is not applicable to the case on hand, since the matter could not be concluded within six months because of the attitude of the petitioner. He also contended that in the absence of prejudice caused to the petitioner for non-furnishing of those documents and the report of the enquiry officer, the ultimate decision cannot be interfered.

6. I have carefully considered the rival submissions.

7. If this Court finds that the second proviso to Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as "the Act") has not been complied with, it is unnecessary to go into the other contentions, particularly the merit of the claim made by both parties. In so far as the said contention, it is relevant to note that suo motu proceedings was initiated on 19-1-89 by issuing a show cause notice to the petitioner and final order was passed only on 17-1-90 which is against the specific provision

of the Act. Section 87 of the Act deals with surcharge proceedings. We are concerned with the proviso to the said Section which reads as under:-

"Provided that no action shall be commenced under this sub-section after the expiry of seven years from the date of any act or omission referred to in this sub-section:

Provided further that the action commenced under this sub-section shall be completed within a period of six months from the date of such commencement or such further period or periods as the next higher authority may permit but such extended period or periods shall not exceed six months in the aggregate."

As per the second proviso, action taken shall be completed within a period of six months from the date of commencement and further period of six months is permissible subject to permission by the higher authority. However, the extended period shall not exceed six months in the aggregate. I have already referred to the fact that show cause notice was issued on 19-01-89 and final order was passed only on 17 -01-90. There is no material to show that the higher authority has granted permission. In this regard, it is relevant to note Ground-"b" in the affidavit wherein the petitioner has specifically taken this point:

"b) .....In this case admittedly the suo motto proceedings was initiated on 19-1-1989 by issuing a Show Cause Notice. The entire proceedings ought to have been completed on or before 18-7-198 9. Admittedly the next higher authority did not extend the time limit beyond 6 months. Hence the impugned order which was passed on 19-1-1990 is without jurisdiction and against the specific provision of law and hence the same is liable to be quashed."

Though Rule Nisi was served on the contesting second respondent as early as 8-5-96, no counter affidavit has been filed controverting the above factual statement. Likewise, though a faint argument was made at the time of hearing that the delay was caused due to several adjournments made at the instance of the petitioner, the same has not been substantiated by producing necessary records. In the absence of neither counter affidavit, nor the relevant records to the proceedings, this Court has no other option except to accept the assertion made in Ground-"b" and hold that the order passed on 17-1-90 is against the specific provision of the Act. For this, the learned counsel for the petitioner has relied on a judgement of T. Meenakumari, J., in Ekambaram v. Co-operative Tribunal-cum-District Judge, reported in 2000 (II) CTC 659. In that decision, the learned Judge had an occasion to consider the very same provision, namely, 87 of the Act. In that case, a show cause notice has been issued on 18-9-89 and the action should have been completed by 18-3-90, but the proceedings have been completed only on 2-5-90. It is further seen that the second respondent therein, namely, Society did not seek the extension of higher authority as the period of six months was over by 18-3-90. In those circumstances, relying on an unreported decision rendered in Writ Petition Nos. 4724 and 17955 of 1997 dated 15-12-1998, held that,

"6.....Under the circumstances it has to be held, that the second proviso to Section 87 of the present Act of 1983 is mandatory in nature and the proviso also stated that the action "shall be" completed within a period of six months and if it exceeds beyond the period of six months, there must be an extension from the higher authority. As the second respondent has not obtained the extension from the higher authority, the action initiated has to be held to be non-est in the eye of law. The second respondent has not followed the second proviso to Section 87 (1) of the present Act of 1983 which is mandatory. As the impugned order has been passed without following the second proviso to Section 87 of the Act of 1983, the same is quashed...."

While considering the very same provision, namely, second proviso to Section 87 of the Act, K. Gnanaprakasam, J.,in Gabriel v. The Deputy Registrar (Housing), Cuddalore, reported in 2003 (3) CTC 23 has taken the same view and held that in the absence of specific order from the higher authority, the order passed beyond the period prescribed is barred by time and liable to be set aside. In the light of the statutory provision-Second proviso to Section 87 of the Act, though this point has not been taken before the authorities, since it goes to the root of the matter and of the fact that this objection has been raised in the affidavit-vide Ground-'b', in the absence of counter affidavit and records, I hold that Second proviso to Section 87 of the Act is mandatory in nature and in the absence of any order for extension from the higher authority, it is to be held that the impugned order has been passed by the second respondent without following the second proviso to Section 87 of the Act; hence the same is liable to be quashed. Though learned counsel for the second respondent by relying on a decision of the Supreme Court in the case of State of U.P. v. Harendra Arora, reported in 2001 (3) CTC 176, would contend that petitioner was not caused any prejudice by not furnishing the documents and the copy of the report of the enquiry officer, in the light of the conclusion namely the mandatory compliance of second proviso to section 87 has not been followed, as observed earlier, it is unnecessary to go into all other aspects and the impugned order of the first respondent, as well as the order of the third respondent confirming the order of first respondent are liable to be quashed.

8. In the light of what is stated above, the impugned orders of the first and third respondents are quashed in so far as the petitioner is concerned and the Writ Petition is allowed. No costs.

R.B.

Index: Yes.
Internet: Yes.
To:-

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2. Y.191, Senni Thottam Primary

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